



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THEODORE NACCARELLA ESQUIRE
SYNNESTVEDT & LECHNER LLP
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA PA 19107-2950

COPY MAILED

NOV 13 2007

OFFICE OF PETITIONS

In re Application of :
Stayt :
Application No. 09/392,817 :
Filed: September 9, 1999 :
Attorney Docket No. STAYT-26 :
For: TRANSMISSION METHOD AND :
APPARATUS FOR OPTICAL FIBER :
TELEVISION NETWORK :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 21, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to submit a timely reply to the June 18, 2004 non-final Office action, which set a three month extendable period for reply. No extensions of time or reply being received, the Office contended that this application became abandoned on September 19, 2004. A Notice of Abandonment was mailed on March 21, 2007.

Petitioner alleges that the June 18, 2004 non-final Office action was incomplete when received and therefore, petitioner was unable to properly respond to it until a complete Office action was transmitted via facsimile to petitioner on October 18, 2004. Petitioner asserts his January 21, 2005 amendment (certificate of mailing date January 18, 2005), was filed within three months of the October 18, 2004 facsimile transmission of the non-final Office action and was therefore timely filed.

Petitioner has provided evidence that the examiner of record transmitted via facsimile a copy of the June 18, 2004 to petitioner on October 18, 2004. The cover sheet to the facsimile transmission states in the examiners hand, " ..here is a copy of the office action, the date will be reset accordingly(.)"

The failure to receive an entire Office action may justify resetting the period of response. It is noted that petitioner did not comply with MPEP 710.06 Situations When Reply Period Is Reset

or Restarted, in that petitioner did not inform the Office that the June 18, 2004 Office action was incomplete in a timely manner. However, the examiner *sua sponte* reset the period for response in the cover sheet of the October 18, 2004 facsimile copy of the June 18, 2004 non-final Office action.

Therefore, applicant had three months from October 18, 2004 to reply to the non-final Office action. Applicant replied on certificate of mailing date January 18, 2005.

The petition is **granted** and the holding of abandonment is withdrawn.

After the mailing of this decision, the application will be returned to Technology Center A.U. 2623 for consideration of the amendment filed on January 21, 2005 (certificate of mailing date January 18, 2005).

Telephone inquiries may be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions